be converted into a bill." The section proceeds to enact what was previously the law, that a paper so signed "operates as *prima facie* authority to fill it up as a complete bill for any amount the stamp will cover, using the signature for that of the drawer or the acceptor or the endorser." Therefore in the present case if the respondent had delivered to him the blank stamped paper with the complainer's signature upon it in order that it might be converted into a bill, he *prima facie* had the complainer's authority to complete it, date it, fill it up for £100, and use the complainer's signature for that of the acceptor, as indeed it bears to be. If the respondent *prima facie* had authority to do these things, it necessarily follows that the burden of showing that he had not authority lies upon the complainer. Before the passing of the Act it was competent for a person who had delivered a blank bill stamp bearing his signature to prove by competent evidence that he did not give authority to fill up the bill in the way in which it was completed by the person to whom it was delivered. Accordingly, the second subsection of section 20 saves his right in that respect by providing that such an instrument in order to be enforceable must be completed within a reasonable time, and strictly in accordance with the authority given, unless indeed the instrument has found its way into the hands of a holder in due course. But the statute does not throw upon the holder the burden of proving this. If it did, what would be the value of the *prima facie* presumption of authority?

The only question which admits of discussion on the terms of section 20 (1) is whether it does not lie on the person who alleges that the blank stamped paper was delivered to him to prove that it was delivered for the purpose of being converted into a bill. That question, however, does not properly arise here, because even according to the complainer's averment (statement 8) the blank stamped paper with his signature upon it was delivered by him to the respondent in order that it might be converted into a bill that money might be raised upon it. He maintains, no doubt, that this was done in 1892 and not in 1896, and that the paper was delivered for a totally different purpose than that for which it is now sought to be used. He therefore differs from the respondent, not as to the fact of delivery but as to the date of delivery and the purpose for which the bill was to be completed and used.

But further, it would be to deny all effect to the presumption arising from possession of the instrument to put upon the holder the burden of proving the footing on which it was delivered to him. To do so would place him at the mercy of his debtor unless he had a witness with him when the instrument was delivered. In my opinion delivery is to be inferred from the bill, however completed, being found in the possession of the transferee.

Lastly, if I had to choose between the evidence for the complainer and that of the respondent, I am disposed to think that, although the respondent behaved somewhat harshly to the complainer in taking a document of debt from him in such circumstances, the balance of evidence is in favour of his story being true. [*His Lordship stated the considerations which led him to this conclusion.*]

It is not, however, necessary to proceed upon that ground, because I think the burden did not lie upon the respondent.

LORD JUSTICE-CLERK—I concur in the opinions which your Lordships have delivered.

LORD TRAYNER was absent.

The Court pronounced the following interlocutor:—

"Sustain the reclaiming-note: Recal the interlocutor reclaimed against: Repel the reasons of suspension: Find the letters and charges orderly proceeded, and decern."

Counsel for the Complainer—Jameson, Q.C.—Christie. Agent—Lawrence M'Laren, W.S.

Counsel for the Respondents—W. Campbell, Q.C.—Ingram. Agent—Jose Ormiston, Solicitor.

Thursday, November 24.

FIRST DIVISION.

[Lord Stormonth Darling, Ordinary.

BANK OF SCOTLAND *v.* W. & G. FERGUSON AND OTHERS.

Process—Summons—Court of Session Act 1850 (13 *and* 14 *Vict. c.* 36), *sec.* 1, *Sched.* (*A*)—*Competency—Court of Session Act* 1868 (31 *and* 32 *Vict. c.* 100), *sec.* 29.

The pursuer of an action laid on a bill of exchange omitted to set forth the bill in his summons in terms of the Court of Session Act 1850, sec. 1, Sched. (A) of that Act, and the A.S., 31st October 1850. Upon his motion for leave to amend the summons so as to bring it into conformity with those enactments, the defenders objected on the ground that the action was *ab initio* incompetent, in respect of its disconformity to the statutory directions.

Held that the action though incompetent in form was susceptible of amendment, and therefore that the proposed amendment must be allowed.

Bill of Exchange—Sexennial Prescription—Interruption.

An action laid on a bill of exchange, and commenced within the sexennium, was incompetent in form, in respect that the bill was not set forth in the summons as directed by the Court of Session Act 1850, Sched. (A).

Held (*aff.* judgment of Lord Stormonth Darling) that having been truly

laid on the bill, it had interrupted the currency of the sexennial prescription.

The Bank of Scotland on 8th February 1898 raised an action against W. & G. Ferguson, Ayr, of which the conclusion was that the defenders should be ordained "to make payment to the pursuers of the sum of £693, 11s. 9d. sterling, with interest thereon at the rate of 5 per centum per annum from the 28th day of February 1892 until payment."

In their condescendence the pursuers averred (Art. 1) that on 25th January 1892 the firm of which the defenders were the sole partners "drew a bill for the amount of £693, 11s. 9d., payable to them on their order one month after date, upon James M. Ferguson, publisher, Ayr, who accepted said bill. The bill was indorsed for value by the said firm in favour of the pursuers, and was presented by them for payment in due course, and protested for non-payment." The pursuers further averred—(Cond. 4) "The principal sum now sued for is the amount contained in the bill."

The defenders pleaded, *inter alia*—"(1) The action is incompetent and ought to be dismissed. (3) The pursuers' statements are irrelevant. (7) The said bill has undergone prescription and cannot now be founded on."

The record was closed on 11th March 1898, and on 1st June the pursuers moved for leave to amend the summons by inserting therein after the principal sum sued for the words "which is the sum contained in and due under a bill of exchange dated 25th January 1892, payable one month after date, drawn by the defenders upon and accepted by James M. Ferguson, publisher, Ayr, payable to them or their order."

The Court of Session Act 1850 (13 and 14 Vict. c. 36), sec. 1, enacts that "the pursuer of any summons before the Court of Session shall set forth in such summons in such way and manner as the Court, having regard to the forms set forth in Schedule (A) hereunto annexed, may from time to time prescribe by Act of Sederunt as applicable to the various forms of action now in use, the name and designation of such pursuer, and the name and designation of the defender, and the conclusions of the action, without any statement whatever of the grounds of action, but the allegations in fact which form the grounds of action shall be set forth in an articulate condescendence, together with a note of the pursuer's pleas-in-law, which condescendence and pleas-in-law shall be annexed to such summons, and shall be held to constitute part thereof." Schedule (A) annexed to the said statute gives, *inter alia*, a form of an ordinary petitory summons, in which, after the words "decerned and ordained . . . to make payment to the pursuers of the sum of sterling," occurs the following direction—[*Where any liquid document of debt is libelled on, whether bond, bill, or other document, as the case may be, set it forth here, as shortly as possible, describing it merely by its date, and the names of the parties by and to whom granted*].

The A.S. of 31st October 1851, section 1, enacts that "all summonses shall be framed in the manner and according to the directions contained in the first section of the above-mentioned statute (viz., the Act of 1850), and in the form of Schedule (A) thereunto annexed."

The Court of Session Act 1868 (31 and 32 Vict. cap. 100), sec. 29, empowers the Court or the Lord Ordinary to "amend any error or default in the record or issues in any action or proceeding in the Court of Session . . . and all such amendments as may be necessary for the purpose of determining in the existing action or proceeding the real question in controversy between the parties shall be so made."

On the 11th June 1898 the Lord Ordinary (STORMONTH DARLING) refused the motion for leave to amend, "in respect that the bill in question suffered prescription after the date of raising the action and before the date when the motion was made."

Opinion.—"The amendment here proposed is of a kind which has on several occasions been allowed under section 29 of the Court of Session Act. But the defenders oppose it under circumstances which are very exceptional. The action was raised on 8th February 1898, and although the condescendence plainly showed that it was laid upon a bill of exchange, the summons contained no reference to the bill. The years of prescription ran out on 28th February 1898, the record was closed on 11th March, and the motion for leave to amend was made on 1st June. In these circumstances the defenders oppose the amendment, on the ground that its purpose is to deprive them of their defence on the sexennial prescription.

"Now, there is no doubt that that is the purpose, and the sole purpose, of the amendment. The pursuers do not admit—and at this stage I do not decide—that the action as it stands (taking summons and condescendence together) is a bad action on the bill. It is, no doubt, a highly technical rule of pleading that requires any liquid document of debt, such as a bond or bill, to be set forth in the summons, and it is difficult to see any good reason for it. But the rule is statutory under Schedule A of the Procedure Act of 1850, and there are *dicta* of weight (though I do not know that there is any express decision) to the effect that an action which violates the statutory form is not merely irregular but incompetent as an action on the bill. This, however, as I have said, is not the proper stage for deciding that question. If the action be good notwithstanding this omission, the pursuers do not require the amendment. It is only on the assumption of the action being bad that they ask leave to make it.

"Section 29 of the Court of Session Act is imperative in requiring all amendments to be made which are 'necessary for the purpose of determining in the existing action or proceeding the real question in controversy between the parties.' But the evident purpose of that enactment is to obviate the necessity of abandoning the existing action and raising a new one. If

the object of the party asking the amendment could be attained by that more expensive mode of procedure, the statute says that the amendment shall be made. But in cases where a new action would do him no good, it would, I think, be unjust to the opposite party to allow the amendment.

"Now, that, I think, is the case here. If the pursuers were to abandon the present action and raise a new one, they would, of course, be met by the plea of prescription. They might then reply that the plea was obviated by their having raised a former action (viz., the present one) before the expiry of the six years; and it is no doubt settled by a series of cases that a bill is saved from prescription by any kind of judicial demand for the amount contained in it having been made within the six years, although the demand may have been in a different process from that in which the plea of prescription is stated. But in order to have that effect, the process (as explained by Lord Rutherfurd in *Dunn* v. *Lamb*, 16 D., at p. 995) must be a competent one, in which the creditor might have succeeded. Therefore the raising of an incompetent action (*Cochran*, 4 D. 76), or of a competent action which is subsequently abandoned (*Gobbi*, 21 D. 861), has no effect in interrupting prescription. Similarly, it was held in *Paul* v. *Inglis & Company*, 2 S. 533 or 628, that an amendment could not be admitted so as to validate an irrelevant penal action after the statutory period for raising a new action had expired. This, no doubt, was before the Act of 1868, but the decision proceeded on a general principle which is equally applicable now. It was, I take it, on the same principle that in *Clark* v. *Adams*, 12 R. 1092, the Court refused to allow a common law action to be converted into an action under the Employers Liability Act after the lapse of the six months allowed by that statute for raising actions. The rule is founded on plain considerations of fair play, and it is followed in England as well as here. In *Weldon* v. *Neal*, 19 Q.B.D. 394, Lord Esher thus expressed it—'If an amendment were allowed setting up a cause of action which, if the writ were issued in respect thereof at the date of the amendment, would be barred by the Statute of Limitations, it would be allowing the plaintiff to take advantage of her former writ to defeat the statute, and taking away an existing right from the defendant, a proceeding which as a general rule would be in my opinion improper and unjust.'

"My refusal of the amendment not only leaves open the question whether, on the summons as it stands, the pursuers can found on the bill as evidence of the debt, but it also, of course, leaves untouched the pursuers' case on the debt as distinguished from the bill."

On 28th October 1898 the Lord Ordinary repelled the first, third, and seventh pleas-in-law for the defenders, and allowed the parties a proof of their averments.

Opinion.—"On 18th June I refused leave to amend the summons by inserting therein a reference to the bill, on the ground that such amendment might prejudice the defenders' plea of prescription. In doing so I expressly reserved the question whether the action without amendment was altogether incompetent, or merely irregular, as an action on the bill. I think now it would have been better if I had disposed of that question first, because if the action as it stood was not incompetent the proposed amendment would have been harmless.

"I have now heard an argument on the question of incompetency. The defender says that the combined effect of Schedule A appended to the Act 13 and 14 Vict. cap. 36, and sec. 1 of the A. S. of 31st October 1850, is to make the action so entirely incompetent that the raising of it had no effect in eliding prescription, and that my duty now is to dismiss it. I cannot go so far as that. If the remedy of amendment were still open, everybody would agree that the summons ought to be brought into conformity with the style prescribed by statute for cases where 'any liquid document of debt is libelled on.' The omission of all reference to the bill in the summons was plainly a mistake, though one purely of form, for the condescendence made it quite clear that the action was laid on the bill. But when the defender contends that the mistake was so fatal as to make the summons practically a piece of waste paper, it becomes necessary to inquire whether the statute declares or implies a penalty so rigorous.

"The section which refers to Schedule A is section 1, and its leading purpose is to discard from the summons all the narrative which used to encumber it, and to direct that the pursuer shall set forth the conclusions 'without any statement whatever of the grounds of action,' these being relegated to the condescendence and pleas-in-law, which, the section goes on to say, 'shall be annexed to such summons, and shall be held to constitute part thereof.' The tendency of all this is to exclude as much matter as possible from the summons. Then comes the schedule, which contains the directory words on which the defender founds. Be it observed, that the Legislature is not dealing with the form of a writ which is to afford permanent evidence of title, but with a step of process in a court of law which may be altered from time to time by the Court itself. I do not mean that such a form ought not to be followed, but that the penalty of not following it ought to be something less than the absolute nullity of the whole proceeding.

"Now, that is the length to which the defender carries it. He says—'Because you have not referred to the bill in your summons, you have not commenced an action on the bill within the sexennium, and the bill is therefore prescribed.' But 'commencing action' on a bill has been liberally construed by decision. It has been made to cover judicial demands which are not strictly actions commenced by the creditor, such as claims in a multiplepoinding, and claims stated by way of compensation in defence. These of course admit of statement without any prescribed form,

and it would be rather singular if such equipollents of action were found to present fewer pitfalls to the creditor than action itself.

"Probably the point is not of general importance, for I can hardly suppose that the combination of circumstances which make the difficulty here is likely often to occur. But, as between the present parties, I think the just course is to repel the 1st, 3rd, and 7th pleas for the defender, and to allow a proof."

The defenders reclaimed, and argued—This was an incompetent action, inasmuch as the pursuers had not followed the prescribed statutory form in their summons. The provisions of the Act of 1850 and the consequent Act of Sederunt were imperative. The action was laid on the bill, but the bill had not been set forth in the summons—*Davis* v. *Cadman*, January 13, 1897, 24 R. 297; *Crozier* v. *Macfarlane & Co.*, June 15, 1878 5 R. 936; *National Bank of Scotland* v. *Williamson & Sons*, April 8, 1886, 23 S.L.R. 612; *Johnston* v. *Pettigrew*, June 16, 1865, 3 Macph. 954. The amendment proposed could have no retroactive effect to validate the action as originally framed—*Symington* v. *Campbell*, January 30, 1894, 21 R. 434. But if the action were radically incompetent, it could not interrupt the currency of the sexennial prescription on the bill, and after the 28th February the bill was prescribed, failing any effectual interruption—Bell, Comm. i., 419; Bell Lectures, i. 509; *Gordon* v. *Bogle*, 1784, M. 7532; *Baillie* v. *Doig*, 1790, M. 11,286; *Campbells* v. *Macneil*, 1799, M. 11,120; *M'Laren* v. *Buik*, February 27, 1829, 7 S. 483; *Cochran* v. *Prentice*, November 24, 1841, 4 D. 76; *Dunn* v. *Lamb*, June 14, 1854, 16 D. 944. To allow the amendment would therefore be to raise up a new action which would date back to the signeting of the original summons, and which would deprive the defenders of the plea of prescription otherwise open to them.

Argued for the pursuers—This was the very class of case which sec. 29 of the Act of 1868 was designed to meet. The action here plainly constituted a good judicial demand on a bill, for though the bill was not set forth in the summons proper, it was clearly founded upon in the condescendence, which, according to the statute of 1850, formed part of the summons. The strict form of the schedule, it was true, had not been adhered to; but those schedules had never been rigorously interpreted—*Green* v. *Shepheard*, July 4, 1866, 4 Macph. 1028, *per* L.J.-C. Inglis, 1030. At the most there was an irregularity here, which the Court was not only empowered but bound to remedy under sec. 29 of the 1868 Act—*Carruthers* v. *Cairns*, May 16, 1890, 17 R. 769; *Guiness, Mahon, & Co.* v. *Coats Iron and Steel Co.*, January 21, 1891, 18 R. 441. A similar amendment had been allowed without question in the case of *Milne's Trustees* v. *Ormiston's Trustees*, March 14, 1893, 20 R. 523.

Lord President—It does not admit of doubt that this summons as it came into Court was not in proper form. The Act of Parliament of 1850, read along with the Act of Sederunt, directs that any action on a liquid document of debt shall contain a mention of that document within the writ called the summons. Accordingly, the summons as it stands now is not in competent form. I use that phrase in order to add that I think that a summons which is not in competent form may be described, as it has been described already in the previous decisions as incompetent. But then, it is, I think, equally clear, and indeed was conceded, that that is a defect in the summons which is susceptible of amendment and cure under the 29th section of the Court of Session Act 1868; and accordingly it is not one of those fatal defects which impart nullity to the action, and the action is one which, when put into shape under the statute, can proceed, and decree can be obtained in it.

Therefore I think that this is not a case where, if the word incompetency is to be used, as I think it may be, the incompetency is of the same class or kind as where there is a wrong instance, or where there is some other defect which cannot be cured under the Act of 1868. The Act of 1868 probably affords a very fair criterion for determining whether the incompetency is of the fatal or the remediable kind; and, by concession, apart from the question of prescription, this defect might have been cured by amendment. That being so, apart from the question of prescription, it would be our plain duty to allow this amendment.

The next question, as it was put in the debate, is, whether the effect of amendment upon the action is to rehabilitate it so that prescription must be held to have been interrupted by the institution of the action. I do not think that that is a fair way of stating the question. The question rather is, Was this bill sued on by this action as raised? And I think it was. It seems to me that although this irregularity appeared on the face of the summons, this was an action upon the bill, and only required to be put in proper shape under statutory amendment in order to found a good decree. I accept the distinction between the cases which have been cited and this case, and, distinguishing this case on the ground that the defect was one remediable, and therefore not essential or vital to the action, I think that the Lord Ordinary should have allowed this amendment, and further, that the action must be held to have interrupted prescription. Accordingly the proper course would seem to be to recal the interlocutor of 18th June, to allow the summons to be amended, and, that having been done, of new to close the record, and repel the plea of prescription as well as the other pleas disposed of by the Lord Ordinary. As regards subsequent procedure, I think it is right that we should recal the allowance of proof *hoc statu*, and send the case back to the Outer House.

Lord Adam—I think it is clear that this is an action on the bill. Now, the Act of 1850 and the Act of Sederunt provide that

—[*here his Lordship quoted as above*]. That has not been done, and therefore the summons is in this respect disconform to the directions of the statute. But then I think that the provisions of the Act are directory, and that while the forms given in the schedule ought to be followed, the failure to insert in the summons a reference to the bill is not irremediable, and therefore can be amended. That the defect is one which can be cured by amendment is indeed not disputed, because it is conceded by the defenders that it would be perfectly competent for the Court to allow the summons to be amended, except for the reason that to do so would prejudice the defender's case upon prescription. It is quite clear, therefore, that it is competent for the Court to allow the amendment, and if so, the question is, what is its duty under section 29 of the Act of 1868. The duty of the Court under that section is to allow errors in the record to be amended where the amendment is necessary for the determination of the true question between the parties. The amendment in this case is, in my opinion, necessary for that purpose, and so we are bound to allow it. The statute is careful to state what effect an amendment is not to have, but it does not contain anything to the effect that it is not to prejudice the defender. I suppose every amendment of the pursuer's record is in a way prejudicial to the defender. I think the amendment should be allowed, and when it has been made that the action must be held to have been competent from the beginning.

Lord M'Laren—It is satisfactory to observe that while we are recalling the interlocutor of the Lord Ordinary on a matter of process, there is no real difference between the Lord Ordinary and the Court on what is the point of importance, namely, whether or not the action should go on. There is, I think, much to be said for the view which the Lord Ordinary took prior to the case being argued on the merits, but I think the course which should have been taken was to refuse the motion for leave to amend *hoc statu*, reserving the question for future consideration. If the Lord Ordinary had taken that course I can hardly doubt that he would have allowed the amendment when the case came to be considered on the merits, because he has allowed proof on the merits, and it follows that the amendment necessary to put the action into shape should be made. In all cases of the kind we have to consider whether the summons is radically defective or whether the error or defect is susceptible of being cured by amendment. The section speaks of errors and defects, and the meaning seems to be that if the defect does not go to the essence of the action, the necessary words should be supplied. Of course there might be such a radical defect as would be incapable of being supplied by amendment—for example, if no defenders were called, or if the summons contained no will. In such cases there would be no process, and the judge would dismiss the action without making up a record. But here we cannot regard the defect in the summons as going to the essence of the action, because the bill of exchange is set out in the condescendence, and in substance the action is a judicial demand against the acceptor in the bill. As regards the effect which the amendment will have on the plea of prescription, it appears to me that the moment we reach the stage of allowing the amendment, it must be conceded that there was the substance of an action in Court at the time the summons was called, and therefore that there was a judicial demand for payment made within the period prescribed by the Sexennial Act.

Lord Kinnear—I entirely agree with your Lordships, in the first place, that the action is well laid on the bill, but that the summons is incompetent in form in respect that the bill of exchange, although specially set forth in the condescendence, is not referred to in the summons. In that respect the action may properly be called incompetent. What effect it would have if the defect in the summons were incapable of remedy it is not necessary to consider, and I do not express any opinion on the question whether the defect in the original summons is so vital that the action would have to be thrown out, or whether it is a defect of a different kind, because the material point is whether it can be cured, and by the admission of the defenders it may be set right by the familiar process of amending the summons. The only question is whether we should allow the summons to be amended, and I am clearly of opinion that the technical defect in the summons should be set right by amendment. I agree that it is a good answer to a motion for leave to amend, if it is shown either that the amendment would be useless as being inadequate to remedy the defect it was intended to remove, or that it would introduce a new ground of action. It is clear that the objection in this case is open to neither the one or the other of these objections. When the summons has been amended the question will be the same as before, namely, whether the pursuer has a good claim on the bill. There are other questions behind, but the main question on the summons as brought is as I have stated, and the amendment, if it has any effect, will simply enable the defenders' plea of prescription to be directed to the proper time, namely, when they were called into Court. Accordingly, I am unable to see any reason why this amendment should not be allowed.

The Court recalled the Lord Ordinary's interlocutors of 28th October and 18th June, opened up the record, and on payment of £5, 5s. allowed the pursuer to amend the summons in the terms set forth in his minute; and the said amendments having been made, of new closed the record, repelled the first, third, and seventh pleas-in-law for the defenders, and remitted to the Lord Ordinary to proceed with the cause.

Counsel for the Pursuers—Campbell, Q.C. —C. N. Johnston. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for the Defenders—Dundas, Q.C. —Taylor Cameron. Agents—Bruce, Kerr, & Burns, W.S.

Friday, November 25.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

MANNERS *v.* WHITEHEAD.

Reparation — Contract—Rescission—Damages—Fraud.

A partner in a firm raised an action against one of the other partners as an individual for payment of the amount of capital which the former had put into the business, and of a sum representing so many years' salary at the rate which the pursuer had been enjoying in a situation before the commencement of the copartnery. There was an alternative conclusion for payment of £20,000 in name of damages. The ground of the action was fraud and misrepresentation on the part of the defender or his agent. The summons contained no conclusion for the reduction of the contract of copartnery, which was still in force.

Held (*aff.* judgment of Lord Kyllachy) that the remedy sought was damages and not rescission and restitution, and that, the pursuer having in fact failed to prove fraud, the defender must be assoilzied.

Process—Proof—Lord Ordinary.

Observations per L. P. Robertson and Lord M'Laren on the weight to be attached to the opinion, on the facts, of a Lord Ordinary before whom proof has been led.

On 3rd March 1897 Frederick William John Manners raised an action against John Whitehead, concluding for payment of "(*First*) the sum of £7250 sterling under deduction of the sum of £333, 6s. 8d. sterling; (*second*), the sum of £1354, 3s. 4d. sterling, with the legal interest of said sum from the date of citation to follow hereon until payment, or alternatively, the defender ought and should be decerned and ordained by decree foresaid to make payment to the pursuer of the sum of £20,000 in name of damages."

The pursuer averred that in October 1892 he had entered into a contract of copartnery with the defender and his son, who carried on the business of granite merchants at Aberdeen. The capital of the new firm was £21,000, of which the pursuer contributed £6000. The pursuer set forth a prospectus and certain balance-sheets of the defender's business which had been drawn up and shown to him prior to his entering the partnership by Mr Harvey Preen, C.A., London, and also set forth certain statements which had been made to him by that gentleman, who, he averred, had been acting as Mr Whitehead's agent in the transaction. The pursuer took charge under the partnership agreement of the Aberdeen office of the firm, whose profits amounted in 1893 to £1475, in 1894 to £1141, and in 1895 to £4, 13s. 3d. "The business did not prove so remunerative as the representatives of the defender and the defender's agent Mr Henry Preen led the pursuer to expect, but the pursuer had no reason to suspect any want of good faith until" he discovered accidentally a copy of an old balance-sheet, which showed the profits for the eighteen months down to May 1891 to be £900 less than the figure at which they had been stated by Mr Preen for the same period.

(Cond. 10) "The said prospectus and balance-sheets contained serious misrepresentations and omissions in essential particulars. The existence of the said errors and omissions was well known to the defender and to his agent Mr Henry Preen. They were not disclosed to the pursuer, but were kept concealed with the object of inducing, and they did in point of fact induce, the pursuer to enter into the foresaid contract of copartnery. When he entered into the partnership the pursuer relied upon the accuracy of the statements made in the said prospectus and balance-sheets. If he had known then the true state of matters the pursuer would never have joined the said partnership." (Cond. 14) "The business of John Whitehead & Sons never has yielded any substantial profit during the whole period of the said copartnery. It can now be carried on only at a serious loss, and the pursuer and defender have concurred in a trust-deed in favour of Mr George M'Bain junior, C.A., Aberdeen, for the purpose of winding-up the business. A copy of the trust-deed is herewith produced and referred to." (Cond. 15) "The sum sued for under the first conclusion of the summons is made up as follows:—

Capital put into the business by the pursuer . . .	£6000	0	0
Interest on said capital for four years and two months at 5 per cent. . . .	1250	0	0
	£7250	0	0
Less amount actually received by the pursuer out of the business from May 1892 to the date of this action	333	6	8
	£6916	13	4

From this sum there will fall to be deducted the amount which the pursuer may receive out of the estate to be realised by the trustee in terms of the foresaid trust-deed. At the time when the pursuer entered into partnership with the defender he was in receipt of a salary of £325 per annum. The amount which he would have drawn during the four years and two months that have since intervened is £1354, 3s. 4d., which is the sum sued for under the second conclusion of the summons."

The pursuer pleaded—"(1) The pursuer having been induced to enter into the said